

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

JERRY PINNELL, JEREMY FERNANDEZ)
AND SHANE PERRILLOUX, individually)
and on behalf of all others similarly situated,)
Plaintiffs,)
v.)
TEVA PHARMACEUTICALS USA, INC.,)
BOARD OF DIRECTORS OF TEVA)
PHARMACEUTICALS USA, INC., TEVA)
PHARMACEUTICALS USA, INC.)
INVESTMENT COMMITTEE, and JOHN)
AND JANE DOES 1-30.)
Defendants.)

CIVIL ACTION NO.:
2:19-CV-05738-MAK

**PLAINTIFFS' MEMORANDUM OF LAW IN SUPPORT OF RENEWED UNOPPOSED
MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT,
PRELIMINARY CERTIFICATION OF SETTLEMENT CLASS, APPROVAL OF
CLASS NOTICE AND SCHEDULING OF A FAIRNESS HEARING**

TABLE OF CONTENTS

I.	INTRODUCTION.....	1
II.	REVISED PLAN OF ALLOCATION.....	1
III.	SETTLEMENT NOTICE PLAN	2
IV.	SETTLEMENT NOTICE REVISIONS.....	3
	A. Description of the Revised Plan of Allocation	3
	B. Method for Settlement Class Members to Object to the Settlement.....	3
	C. Alerting Class Members to the Potential of a Telephonic or virtual Fairness Hearing.....	4
V.	CONCLUSION.....	4

TABLE OF AUTHORITIES

	PAGE(S)
Cases	
<i>Parker v. Time Warner Entertainment Company, L.P.</i> , 2007 WL 9706336, at * 19 (E.D.N.Y. Jan. 26, 2007)	1

I. INTRODUCTION

Plaintiffs, participants in the Teva Pharmaceuticals Retirement Savings Plan (the “Plan”), previously submitted for the Court’s consideration, their Unopposed Motion for Preliminary Approval of Class Action Settlement, Preliminary Certification of Settlement Class, Approval of Class Notice and Scheduling of a Fairness Hearing (ECF 68) with an accompanying memorandum (ECF 68-1) and declaration (ECF 68-2). The Court held a public hearing on November 30, 2020 on Plaintiffs’ motion. The Court denied Plaintiffs’ motion “without prejudice to promptly filing a renewed Motion and accompanying Memorandum with a revised Settlement Agreement and/or Plan of Allocation as warranted to specifically address” the Court’s Concerns. ECF 70.

The Parties¹ have met and conferred and have agreed to revise exhibits to the Settlement Agreement, as described below, which address the Court’s concerns. The Settlement Agreement with the proposed revised exhibits is attached to the Gyandoh Declaration in Support of the Renewed Motion for Preliminary Approval (“Gyandoh Decl.”) as Exhibit 1. Plaintiffs otherwise incorporate their arguments in support of preliminary approval of the Settlement as set forth in their prior filing (e.g., ECF 68- 68-4).

II. REVISED PLAN OF ALLOCATION

To address distributional fairness, Plaintiffs have modified the Plan of Allocation so all “similarly situated class members are treated the same by the settlement.” *Parker v. Time Warner Entertainment Company, L.P.*, 2007 WL 9706336, at * 19 (E.D.N.Y. Jan. 26, 2007). Attached as Exhibit 2 to the Gyandoh Declaration is a “redline” of the previous Plan of Allocation showing revisions made.² In the revised Plan of Allocation, all Settlement Class members will receive a

¹ Plaintiffs and Defendants are collectively referred to as the “Parties.”

² The clean version of the revised Plan of Allocation is attached to the Settlement Agreement as Exhibit B.

minimum distribution of \$10. In other words, any Settlement Class Member who would otherwise have received less than \$10 will now receive a minimum distribution of \$10. This includes any member of the Settlement Class who signed a Separation Agreement releasing claims against Teva. Under the Plan of Allocation, if such Settlement Class member had a balance in their Plan account beginning with the first date of the financial quarter following the quarter during which such Settlement Class member entered into the Separation Agreement, they will be eligible for a distribution.

III. SETTLEMENT NOTICE PLAN

Plaintiffs address the procedures for sending out the Notice of Class Action Settlement (“Settlement Notice”) in the revised Preliminary Approval Order. Attached as Exhibit 3 to the Gyandoh Declaration is a redline of the Preliminary Approval Order showing changes made.³ The revised notice plan is designed to reach the largest number of Settlement Class members possible.

Pursuant to paragraph 8 of the Preliminary Approval Order, prior to mailing the Settlement Notice, the Settlement Administrator shall be required to conduct an advanced address research (via skip-trace databases) in order to identify current mailing address information for the Settlement Class members. Additionally, the Settlement Administrator must update the Settlement Class member address information using data from the National Change of Address (“NCOA”) database. After mailing the Settlement Notice, the Settlement Administrator shall use commercially reasonable efforts to locate any Class Member whose Settlement Notice is returned and re-send such documents one additional time.

Further, the parties have been able to determine the Plan’s recordkeeper maintains a record of email addresses (both work and personal) for the vast majority of Plan participants (likely 90%).

³ The clean version of the revised Preliminary Approval Order is attached to the Settlement Agreement as Exhibit C.

Accordingly, in addition to mailing Settlement Notices, paragraph 8 of the proposed Preliminary Approval Order requires the Settlement Administrator to email a copy of the Settlement Notices to the email addresses on file for Settlement Class members as of the date the Preliminary Approval Order is signed.

Finally, the Settlement Notice and all other documents related to the Settlement will be posted to the dedicated settlement website more fully described in Plaintiffs' prior filing.

IV. SETTLEMENT NOTICE REVISIONS

Attached as Exhibit 4 to the Gyandoh Declaration is a redline of the Settlement Notice showing revisions made.⁴ The revised Settlement Notice addresses the following concerns.

A. Description of the Revised Plan of Allocation

Page 6 of the revised Settlement Notice describes the revised Plan of Allocation in laymen's terms. The language in the Settlement Notice is consistent with the language used in the Plan of Allocation.

B. Method for Settlement Class Members to Object to the Settlement

Pages 1 and 7 advise the Settlement Class Members on their options for objecting to the Settlement. Settlement Class members are instructed they may file their objections with the Court either by sending a physical copy to the Clerk of Court or emailing their objection to PAED DOCUMENTS@paed.uscourts.gov which is the email address on the Court's website to be used by Pro Se litigants to "send any documents, preferably in PDF format, for filing." Settlement Class members are also advised they may email their objections to Class Counsel and Defense Counsel.

C. Alerting Class Members to the Potential of a Telephonic or Virtual Fairness Hearing

⁴ The clean version of the revised Notice of Class Action Settlement is attached to the Settlement Agreement as Exhibit A.

Lastly, the prior Settlement Notice advised Settlement Class members the Fairness Hearing may be held telephonically or by video conference. *See Page 7-8 (“The Fairness Hearing”).* The revised Settlement Notice adds a reminder to Settlement Class members to also “check the settlement website” prior to the Fairness Hearing because Plaintiffs’ counsel will continuously update the website with the latest information concerning the Fairness Hearing.

V. CONCLUSION

Based on the foregoing, and their prior filing, Plaintiffs respectfully move this Court to grant their Renewed Unopposed Motion for Preliminary Approval of Class Action Settlement, Preliminary Certification of Settlement Class, Approval of Class Notice, and Scheduling of a Fairness Hearing.

DATED: December 4, 2020

Respectfully submitted,

CAPOZZI ADLER, P.C.

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Class Counsel

CERTIFICATE OF SERVICE

I hereby certify that on December 4, 2020, a true and correct copy of the foregoing document was filed with the Court utilizing its ECF system, which will send notice of such filing to all counsel of record.

/s/ Mark K. Gyandoh

Mark K. Gyandoh, Esq.